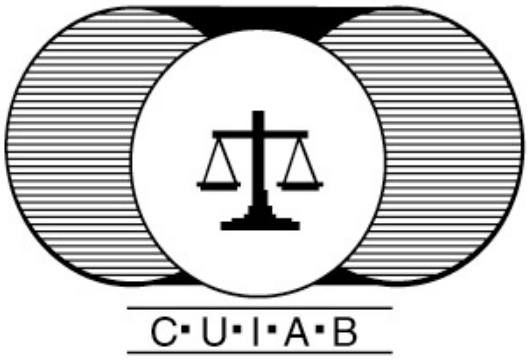
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD



UNEMPLOYMENT APPEALS

A GUIDE FOR CLAIMANTS, EMPLOYERS AND THEIR REPRESENTATIVES

Provided by:

THE CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

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I. INTRODUCTION

Except for the appeals process, the California Unemployment Insurance program is administered by the Employment Development Department (EDD). A claimant or an employer may appeal from most actions of the Department which adversely affect his or her rights.

The action by EDD usually consists of serving a written notice to the affected claimant and/or employer. This notice may take the form of a Notice of Determination, Notice of Ruling, Notice of Invalid Claim, Notice of Computation of Benefits, Notice of Overpayment, or Notice of Assessment. The notice spells out the action taken or the decision made by EDD.

The appeals process is administered by a separate and independent agency, the California Unemployment Insurance Appeals Board (CUIAB). The CUIAB is a seven-member Board or commission, headquartered in Sacramento, which maintains a staff of Administrative Law Judges (ALJs) in twelve offices throughout the State. There are two levels of appeal. The first or lower level is the appeal to an ALJ. The second or higher level is an appeal to the CUIAB. You must exhaust your appeal to an ALJ before you can appeal to the CUIAB.

Appeals to an Administrative Law Judge

If you disagree with the Department's action and file an appeal, you will get a hearing before an ALJ. At the hearing the ALJ will take testimony and/or written evidence. After the hearing you will receive the ALJ's written decision in the mail.

Appeals to the California Unemployment Insurance Appeals Board

If you take issue with the ALJ's decision, you may file a further appeal to the CUIAB. The Appeals Board does not ordinarily take further evidence. After reviewing the evidence taken at the hearing including the testimony, the Appeals Board issues a written decision.

The following material is a guide to the two appeal processes, together with a short course on California Unemployment Insurance Law. Also included is a list of more detailed publications and materials pertaining to unemployment insurance, with information about how to obtain them.

II. APPEALS TO AN ADMINISTRATIVE LAW JUDGE *

The unemployment insurance appeals process is simple and designed for claimants and employers who do not have an attorney. At an informal hearing, the ALJ advises all parties of their rights and conducts most of the questioning of witnesses. Most of the technical rules restricting the admission of evidence encountered in a courtroom do not apply in administrative hearings.

You should have no fears or misgivings about pursuing your appeal to an ALJ. There are no technical traps – unless you want to call time limitations technical traps. On the other hand, there is no magic formula for a successful appeal. Ordinarily you will prevail only if the law which applies to the facts of your case is in your favor. The following are basic guidelines, common to all cases, which will aid you in preparing for and presenting your appeal at the hearing.

FILING THE APPEAL

The Time Limits

An appeal to an ALJ must he filed within 20 days of the mailing date of the Department determination or ruling (Section 1328, California Unemployment Insurance Code). The mailing date is on the notice of the determination or ruling. If you mail your appeal, the envelope must be mailed on or before the 20th day.

Good Cause for Late Appeals

If you file your appeal AFTER the deadline, you must have good cause for failing to file within the time limit. Good cause generally exists when you were prevented from making the deadline by circumstances beyond your control and which you could not have reasonably anticipated. Excuses such as: you forgot, or you did not note the deadline on the department document, do not constitute legal good cause.

The Department Notice of Determination or Ruling sent to an employer is considered properly served if it was received at any business address of the company. Claimants often report the address at which they worked, rather than company headquarters, on unemployment insurance forms. In such a case, the Department may send its Notice of Determination or Ruling to that address. Therefore, the fact the Department determination did not arrive on the desk of a personnel officer or other company official in time to file an appeal within the deadline does not constitute good cause. It is the company's responsibility to route the Department document to the proper person on time. The same rule, generally speaking, applies to union representatives and lawyers authorized to file claimants' appeals. It is the claimant's responsibility to arrange with his representative to have the appeal filed on time.

If You Filed a Late Appeal, You Must Present an Excuse

Section 5051, Title 22, California Code of Regulations, provides a late appeal must be dismissed if the appellant fails to establish good cause for delay in filing.

Appellants occasionally defeat their own appeal by sending a representative to the hearing who is prepared to present evidence on the main issues of the case but knows nothing about the cause of the late filing of the appeal.

The Contents of the Appeal

Section 5008, Title 22, California Code of Regulations requires that the appeal be in writing and include the appellant's name and mailing address, the employer account number, if any, the name and mailing address of any representative filing the appeal, and the name and social security number of any claimant who is a party. The appeal may also include the appellant's telephone number and/or electronic address; the date or case number of the underlying department action; a concise statement of the reasons for the appeal; any request for language assistance or special accommodation; and the appellant's signature and date signed.

You may use an appeal form obtainable from the department or Appeals Board office, but it is not necessary to use this form. The appeal may be in letter form.

PREPARING FOR THE HEARING

Gathering the Evidence

As soon as possible after you file an appeal, or learn that the other party has filed one, interview witnesses, review the necessary documents and records, and begin to gather the essential evidence necessary to present your appeal.

A good place to start is the Department's appeal file. You may see this file by visiting the Office of Appeals to which the hearing has been assigned. On the day of the hearing, the file will be in the possession of the ALJ at the place of hearing, and will be available for review anytime before the hearing. If you are notified that, due to distance from the hearing, you will participate and/or testify by telephone, copies of the appeal documents will be mailed to you. Otherwise, copies are not supplied and you must visit the Office of Appeals to inspect and copy from the documents.

The Department's appeal file should reveal the information gathered by Department representatives in making the determination being appealed. Once you review this material, you should have an idea what you will need to challenge or support, as the case may be, the Department's conclusions.

Under Sections 1094 and 1095 of the Code, parties are entitled to examine records in the possession of the Department necessary to protect their rights under the Code and not otherwise prohibited by law.

If you do not fully understand the Department's action, discuss the case with a Department representative.

Obtaining the Testimony of Witnesses

If you are not certain that the witnesses you need will voluntarily attend the hearing or, as is often the case, your witness requires an excuse to get time off from work, the Office of Appeals to which your appeal is assigned will, at your request, either: issue a Subpoena or mail out A Notice to Attend.

- You must supply the witness's name, and, for a Notice to Attend, the witness's address.
- You must serve a subpoena or have it served on the witness.

The Notice to Attend is mailed to the witness. The Office of Appeals does the mailing. In either case, you must supply the witness's name and current address.

Ordinarily, the Notice to Attend should be used only when witnesses are likely to appear without compulsion.

You must also make the request as far ahead of the hearing as possible. If you wait until the last minute, the subpoena may not be enforceable, or the notice may not reach the witness.

Witnesses secured by the above procedures are entitled to a witness fee and mileage allowance, paid by the State, for attending the hearing.

Obtaining Written Evidence

Review and determine the necessity of producing records, letters, documents and other written material. It goes without saying, the best evidence of the contents of a document is the document itself. Typical written material introduced into evidence in unemployment hearings includes employer records such as time cards, payroll records, warning notices, exit interviews and posted company rules; union forms such as hiring and membership records; and personal records, the most common being medical reports.

If you do not have possession of the original, or good copies of written material, contact the Office of Appeals and arrange to have the document(s) subpoenaed. To obtain such a subpoena you must fill out a form identifying the document or record, the person or office having possession of the original or a copy, and explaining why you believe the document is relevant in your case.

Researching the Law

The ALJ is a specialist in unemployment insurance law. It is not necessary to research the law for his or her benefit.

If you wish to familiarize yourself with the law pertaining to your appeal, begin by reviewing the basic statutes in the California Unemployment Insurance Code and Regulations in Title 22, California Code of Regulations, pertaining to your

case. You may also wish to check the Index-Digest of CUIAB Precedent Decisions.

Each of the twelve CUIAB appeals offices has a library containing these and other legal materials. You must visit the office during office hours to review legal material. The law books are not available for loan. You also may review these materials at www.cuiab.ca.gov. Some of the above material is for purchase (see chapter VI).

The Notice of Hearing

You will be mailed a Notice of Hearing which should be carefully examined as soon as you receive it.

If you have a serious problem with the date time or place of hearing, contact the Office of Appeals without delay. You must have good cause to change the date, time or place. Ordinarily, conflicting business activities or appointments do not constitute good cause for postponing the hearing. To obtain a continuance of the hearing you must show that circumstances prevent you from attending on the date. The fact that you merely prefer to attend to other business does not constitute good cause for continuance.

The notice also sets forth the issues to be covered at the hearing. Check these carefully. Parties occasionally overlook or forget the fact that there may be more than one issue of eligibility at stake, particularly when two or more Department determinations for notices of overpayment are combined for one hearing. If the notice of hearing does not list issues you expect to be covered at the hearing, contact the Office of Appeals as soon as possible.

THE HEARING

Time Allotted

Normally one hour is allotted for hearing benefit cases. If you have several witnesses or an unusually complicated factual situation, it is advisable to notify the Office of Appeals prior to scheduling the case for hearing. With a proper showing, additional hearing time will be allotted.

Be Prompt

Section 5066, Title 22, California Code of Regulations, provides that the ALJ may dismiss the appeal if the appellant fails to appear in the hearing.

If it is your appeal and you do not appear at the appointed hour, and no other communication was received from you, the ALJ has no way of knowing whether you will appear at all. It is only fair and reasonable for the ALJ to then allow the other party and witnesses to leave. Even if you show up later, the hearing cannot be held if the other side is not present.

The law provides no leeway. On time is on time. ALJs customarily wait 15 minutes for the appellant before sending the other side home and dismissing the

appeal. You have no legal right, however, to the 15 minutes' grace. If you are not the appellant, the hearing will proceed, on schedule, without you.

The printed hearing notice form instructs you to arrive 10 minutes early. It is a good idea to do so, if for no other reason than to make a last-minute check of the documents and records in the appeals file to see whether something new has been filed since you reviewed the contents of that folder.

If you have a last-minute emergency or a delay en route to the hearing, contact the Office of Appeals immediately.

Hearing Procedure

Section 5062(m), Title 22, California Code of Regulations provides in part:

"The taking of evidence in a hearing shall be controlled by the administrative law judge in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the administrative law judge shall explain the issues and the order in which evidence will be received."

Ordinarily the ALJ conducts most of the questioning of witnesses. You have a right to question your own and opposing witnesses on matters you do not believe were adequately covered.

Basic Rule of Evidence

Section 5062(e), Title 22, California Code of Regulations provides:

Except as otherwise prohibited by law, "any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions."

If You Are Taken by Surprise, Don't Know What to Do Next, or Forget Something

Don't be bashful or embarrassed; ask the ALJ for help.

If you disagree with the ALJ's ruling, or a denial of your request, make a brief statement informing him/her of the reasons you disagree. Even if you get no satisfaction from the ALJ at the hearing, you have made your objection or request a matter of record. If he or she was wrong, you may have grounds for reversal on appeal.

Personal Attendance

You need not attend the hearing in person. You may submit your testimony, and the testimony of others, in writing. Contact the Office of Appeals to which your case is assigned for advice and instructions on preparing and submitting statements and declarations, and foregoing personal appearance at the hearing.

AFTER THE HEARING

The ALJ's Decision

After the hearing, you will receive, in the mail, a written decision setting forth the facts the ALJ deemed important as determined, in some cases, from conflicting evidence, and the reasons for the decision. Accompanying the decision will be an attachment briefly describing your rights to appeal an adverse decision to the CUIAB.

Except to correct clerical errors, the ALJ cannot change the decision once copies are mailed to the parties. If you believe the ALJ was either wrong or merely mistaken, your only recourse is to appeal to the CUIAB.

If You Missed the Hearing

You have 20 days to file a written request for a new hearing. Explain, in detail, why you did not attend. If the ALJ denies your request, you may appeal that decision to the Appeals Board.

Specific Rights and Privileges – Rules on Appeals to an ALJ

The following are some of the statutes and rules setting forth the right and privileges of parties to UI appeals. For complete text of rules of the CUIAB, see Chapter IV.

Statutory Rights

1. To file an appeal	UI Code Sections 1328, 1330, 1331, 1332, 1336, 3656, 4656, 1377, 2707, 2712, 2707.4, 2707.5
2. To examine Department records	Code Sections 1094, 1095
3. To arrange for payments due an incompetent or deceased person	Code Sections 1341, 2705
4. To a closed hearing in a disability case	Code Section 2713
5. To seek judicial review	Code Sections 410, 409.2
6. To obtain subpoenas	Code Sections 1953, 1954, Board Rule 5058

Selected Rules

1. Witnesses and subpoenas	Board Rule 5058
2. Consolidation of similar cases	Board Rule 5053
3. The right to call witnesses, to examine and cross-examine and to send	Board Rule 5062

interrogatories and request depositions	
4. The right to a continuance for good cause	Board Rule 5057
5. File written and oral argument	Board Rule 5064
6. To withdraw an appeal	Board Rule 5050
7. To review or obtain a case file, audiovisual record, or a transcript that has been prepared	Board Rule 5010

III. APPEALING TO THE BOARD *

You have just received the decision of the Administrative Law Judge who ruled against you. You disagree with the decision and feel that the statement of facts or reasons for decision or both are incorrect. What to do?

As a party to the appeal, you may appeal the Administrative Law Judge's decision to the Appeals Board. (Under the Code, the Director of the Employment Development Department is also a party and may appeal the Administrative Law Judge's decision.) Your appeal to the Board must be filed within twenty (20) calendar days of the mailing date of the Administrative Law Judge's decision to be timely. ** If you are late in filing your appeal be sure to include in your appeal the reasons, in detail, why you filed late so the Board may consider if there was good cause for the late filing. If no good cause is found, the appeal will be dismissed.

How to Appeal

It is not necessary to use a specific form to appeal to the Board. It may be in the form of a letter. The appeal to the Board must be in writing and include the board appellant's name and mailing address: the employer account number, if any, of the appellant; the name and mailing address of any representative filing the appeal; and the name and social security number of any claimant who is a party. The appeal may also include the appellant's telephone number and/or electronic address; the date or case number of the decision or order being appealed; a concise statement of the reasons for the board appeal; and the signature of the board appellant and date signed. The appeal should be sent to the Office of Appeals where the case is located.

What Happens Next

On receipt of your appeal, a letter is sent to you acknowledging receipt of your appeal and advising you of procedural options available to you at the Board level. A similar letter is sent to the other parties, along with a copy of the appeal. The acknowledgment letter also informs you of your Appeals Board case number which should be used in any communication concerning your appeal.

*By Thomas L. Sapunor, Senior Administrative Law Judge (Retired)

**Exception: Appeals from denials of petitions for reassessment/refund or employer false statement assessment must be filed within 30 days of the Administrative Law Judge's decision.

Additional Evidence

The purpose of an appeal to the Board is to obtain a review of the Administrative Law Judge's decision. The Board Panel will decide the case based on testimony and other evidence presented at the hearing before the Administrative Law Judge. Evidence offered to the Board which could have been offered at the Administrative Law Judge hearing, but was not, will not be considered by the Board. A copy of any items submitted by a party to the Appeals Board for additional evidence must be sent to the other party or parties to the appeal. The acceptance of any additional evidence is discretionary with the Board.

Argument

Within 12 calendar days of the letter acknowledging receipt of an appeal, any party may send written argument to the Appeals Board. A copy of any written argument must be sent to the other party or parties to the appeal. You are not required to submit an argument and no precise legal form is required for written argument but it must be restricted to comment on the evidence already in the record and the applicable law.

All parties may request a copy of the record on appeal to assist them in preparing their arguments. There is no charge to claimants, but a specific request must be made to the Appeals Board for any items in the record. The charge for non-claimants is $5.00 each for the documents, the audio record and, if available, the transcript. Any request for the record must be made within 12 calendar clays of the acknowledgment letter mailing date, if written argument is to be sent after receipt of the record. A party will be notified of the date for sending written argument to the Appeals Board and any other parties or party when the record is provided.

The Decision Process

After the time for submission of argument has passed, your appeal will be assigned to one of the panels composed of two board members for review and decision. The concurrence of two members assigned is sufficient to decide the case. If two members do not agree, a third member is added to the panel to decide the case. The disagreeing member may simply show his/her dissent or may have added a written dissent.

Following the panel's review, the written decision is sent to the parties. When this decision is sent, the Board has no further jurisdiction and cannot change the decision or reconsider it, except to correct clerical error. At this point, you have exhausted your administrative appeals process. Any further appeal is made by filing for a writ of mandate to a Superior Court in the State of California, within the period provided.

Precedent Decisions

From time to time, the Board issues precedent decisions which interpret the Unemployment Insurance Code and are binding upon the Board's Administrative Law Judges and the Employment Development Department. All seven (7) members of the Board participate in these decisions. Precedent decisions are issued usually to clarify areas of the Unemployment Insurance Code which have been the source of confusion or uncertainty in interpretation.

IV. RULES OF UNEMPLOYMENT INSURANCE APPEALS BOARD

Chapter 1. General

Chapter 2. Field Operations

Chapter 3. Appellate Operations

Chapter 1. General

§ 5000. Definitions:

Unless otherwise required by the context or specified in the code or these rules, for the purpose of these rules:

(a) “Administrative law judge” means any person, including any board staff administrative law judge, appointed as provided by law to hear and render decisions pursuant to code section 404.

(b) “Affidavit” means a written statement under oath made in compliance with Code of Civil Procedure sections 2012 through 2015.6, including a declaration under penalty of perjury made in compliance with Code of Civil Procedure section 2015.5

(c) “Agency” means the administrative unit consisting of the board and its employees.

(d) “Appeal” means a request for review of an adverse department action by an administrative law judge, other than a petition.

(e) “Appellant” means a party initiating an appeal.

(f) “Appellate operations” means the activities carried on by the agency to adjudicate board appeals.

(g) “Applicant” means a person or representative of a person initiating an application.

(h) “Application” means a request for action by an administrative law judge or the board, other than an appeal, petition, or board appeal, filed or stated by the applicant to an administrative law judge.

(i) “Audiovisual record” means the original or a copy of any audio or video record of the proceedings maintained by the agency.

(j) “Board” means the California Unemployment Insurance Appeals Board.

(k) “Board appeal” means a request for review of an adverse decision or order of an administrative law judge by the board.

(l) “Board appellant” means a party initiating a board appeal.

(m) “Board office” means the principal office of the board.

(n) “Board respondent” means a party responding to a board appeal.

(o) “Case file” means the written information about a case maintained by the agency, including the case register, but excluding internal agency deliberative case management documents, the audiovisual record, and any transcript that has been prepared.

(p) “Case register” means the written record of communications with and transactions by the agency in a case, excluding the audiovisual record.

(q) “Chairperson” means the board member designated by the governor to hold that office, or, in the absence of the chairperson, a board member designated to act as chairperson as provided by code section 401.

(r) “Chief administrative law judge” means the person appointed as provided by code sections 405 and 406.

(s) “Claimant” means a person claiming benefits under the code.

(t) “Clerical error” means an error, mistake, or omission, by any employee of the agency, which is the result of inadvertence, not the deliberate result of the exercise of judgment, discretion, or reasoning.

(u) “Code” means the Unemployment Insurance Code.

(v) “Consumer” means a consumer as defined in Code Civil Procedure section 1985.3(a)(2).

(w) “Day” means a calendar day.

(x) “Decision” means decision as defined in Government Code section 11405.50.

(y) “Department” means the Employment Development Department.

(z) “Department branch” means the applicable branch of the department.

(aa) “Director” means the director of the Employment Development Department.

(bb) “Document” means a writing as defined in this rule.

(cc) “Electronic hearing” means a hearing in which a party or witness has the opportunity to participate by telephone, television, or other electronic means.

(dd) “Electronically transmit” means transmit by facsimile, electronic mail, internet, or other electronic means, to a valid electronic address of the recipient which has been furnished by the recipient, provided that any document in which a signature is required or used is transmitted by a means that transmits the original or a copy of the signature.

(ee) “Express” means ship by express service common carrier, for next day or second day delivery, addressed to the recipient’s street address last known to the sender, with shipping charges prepaid or guaranteed.

(ff) “Field operations” means the activities carried on by the agency to adjudicate appeals and petitions.

(gg) “Filing” means sending in writing to the agency or department branch office where the case is located. If the person filing does not know that location, the document may be sent to any office of the agency or the department branch. A document is filed on the date it is sent.

(hh) “Good cause” means a substantial reason under the circumstances, considering the diligence of the proponent and any burden or prejudice to any person involved. “Good cause” includes, but is not limited to, mistake, surprise, inadvertence, or excusable neglect.

(ii) “Holiday” means holiday as defined in Code of Civil Procedure section 12a.

(jj) “Mail” means deposit with the United States Postal Service, addressed to the recipient’s mailing address last known to the sender, with express, priority, or first class postage prepaid.

(kk) “Notice to attend” means a request that a person testify as a witness in a hearing.

(ll) “Notice to attend and produce” means a notice to attend which includes a request that the witness produce documents or things.

(mm) “Office” means a facility regularly maintained and staffed during normal business hours by a party or the agency, where any activity of the party or the agency is carried on.

(nn) “Office of appeals” means a field operations office of the agency which is so named, or the office of the chief administrative law judge.

(oo) “Order” means a disposition, other than a decision, issued by an administrative law judge or the board, and served by the agency.

(pp) “Panel” means the board members assigned to a case as provided by code section 409.

(qq) “Party” includes the department, appellant, petitioner, respondent, board appellant, board respondent, any other person joined or allowed to intervene in the proceeding, or a representative of any these.

(rr) “Person” includes a natural person, firm, association, organization, partnership, estate, trust, corporation, limited liability company, or public entity.

(ss) “Personal records” means personal records as defined in Code of Civil Procedure section 1985.3(a)(1).

(tt) “Petition” means a tax petition, which is any type of request for review of an adverse department action by an administrative law judge that is authorized by Chapter 4 of Part 1 of Division 1 of the code.

(uu) “Petitioner” means a party initiating a petition.

(vv) “Presiding administrative law judge” means a person appointed to administer the activities of an office of appeals or the board staff in addition to performing the duties of an administrative law ludge.

(ww) “Representative” means a person with actual or apparent authority to represent another in a proceeding.

(xx) “Respondent” means a party responding to an appeal or petition.

(yy) “Rule” means a section of this subdivision.

(zz) “Send” means mail, express, electronically transmit, or physically deliver.

(aaa) “Serve” means send in writing to each unrepresented party and to the representative of each represented party. The agency need not serve a document on the party that filed it. A document is served on the date it is sent.

(bbb) “Signature” includes a mark made in compliance with Section 14 of the Civil Code, or a digital signature affixed by any means used by the sender, accepted by the recipient, and acceptable under Section 16.5 of the Government Code and Chapter 10 of Division 7 of Title 2 of the California Code of Regulations.

(ccc) “Subpoena” means an order that a person testify as a witness in a hearing.

(ddd) “Subpoena duces tecum” means a subpoena which includes an order that the witness produce documents or things.

(eee) “Untimely” means not filed or served within the time permitted by the code or these rules.

(fff) “Waiver” means the intentional relinquishment of a known right.

(ggg) “Writing” means the original or a copy of any form of recorded message capable of comprehension by ordinary visual means.

(hhh) All terms which are defined in the code shall be construed as defined therein.

(iii) These definitions apply to the term defined and to its conjugates.

(jjj) The singular includes the plural and the plural the singular.

§ 5001. Applicability of Rules.

These rules apply to proceedings arising under the code.

§ 5002. Applicability of Administrative Procedure Act.

The applicability to the agency of the administrative adjudication provisions of the Administrative Procedure Act, which are set forth in Chapters 4.5 and 5 Part 1 of Division 3 of Title 2 of the Government Code, is as follows:

(a) Article 1, 2, 3, 4, 6, 7, and 8 of Chapter 4.5 are applicable.

(b) Article 9 of Chapter 4.5 is applicable except Government Code section 11440.50, which is not.

(c) Article 12 of Chapter 4.5 is applicable, except that any authority of the board or an administrative law judge to make an order under Government Code section 11455.30 is subject to the limitations of the code, including, but not limited to, code sections 1956 and 1958.

(d) Article 5 of Chapter 4.5 is not applicable, except Government Code section 11420.30, which is.

(e) Articles 10, 11, 13, 14, and 15 of Chapter 4.5 are not applicable.

(f) Chapter 5 is not applicable.

§ 5003. Waiver of Rights.

Except to the extent prohibited by a statute or another regulation, a person may waive a right conferred on the person by these rules.

§ 5004. Computation of Time.

In computing the time within which any act must be performed, the first day shall be excluded and the last day shall be included. If the last day is a Saturday, Sunday, or holiday, the act must be performed on the next day that is not a Saturday, Sunday, or holiday.

§ 5005. Late Filing or Service.

Unless otherwise specified in the code or these rules, the time for filing or service may be extended, or late filing or service permitted, upon a showing of good cause.

§ 5006. Proof of Service.

(a) Unless otherwise specified by the agency, any document required to be served by a party shall be filed with proof of service showing the document and the person served, the person making service, and the date and manner of service.

(b) Proof of service shall be in writing, but need not be signed under oath, or in any particular form.

§ 5007. Time Limitations.

(a) If no other time is provided by the code or these rules, an appeal or board appeal shall be filed within 20 days after notice of the action, decision, or order being appealed was served on the appellant or board appellant.

(b) A disputed coverage appeal may be filed by the claimant, department, voluntary plan insurer or self-insurer, or a representative of any of these. A disputed coverage appeal shall be filed within 30 days after notice of denial of coverage was served on the appellant. In disputed coverage cases in which notice of denial of coverage is not furnished, an appeal shall be filed after the expiration of 25 days, and within 55 days, from the date the appellant sends a request for payment of benefits to the department or voluntary plan insurer or self-insurer.

(c) In the case of a denial of a disability claim by a voluntary plan insurer or self-insurer, if no notice of denial is furnished, an appeal can be filed after the

expiration of 30 days, and within 60 days, from the date the claim was sent to the voluntary plan insurer or self-insurer.

(d) If no other time is provided in the code or these rules, a petition shall be filed within 30 days after notice of the department action s served on the petitioner. An additional 30 days may be granted upon a showing of good use.

(e) A board appeal from the decision of an administrative law judge on a petition shall be filed within 30 days after the decision was served on the board appellant.

§ 5008. Appeal, Petition, or Board Appeal.

(a) An appeal, petition, or board appeal shall be filed as defined in rule 5000(gg).

(b) An appeal, petition, or board appeal shall include:

(i) the name of the appellant, petitioner, or board appellant, exclusive of any representative;

(ii) the employer account number, if any, of the appellant, petitioner, or board appellant, exclusive of any representative;

(iii) the mailing address of the appellant, petitioner, or board appellant;

(iv) the name and mailing address of any representative filing the appeal, petition, or board appeal;

(v) the name of any claimant who is a party; and

(vi) the social security number of any claimant who is a party.

(c) An appeal, petition, or board appeal may include:

(i) any telephone number of the appellant, petitioner, or board appellant;

(ii) any electronic address of the appellant, petitioner, or board appellant;

(iii) the date or case number of the underlying department action, decision, or order;

(iv) a concise statement of reasons for the appeal, petition, or board appeal;

(v) any request for language assistance or special accommodation; and

vi) the signature of the appellant, petitioner, or board appellant, and the date signed.

(d) The department shall promptly send to the agency any appeal, petition, or hoard appeal that a party files with the department.

(e) The agency shall serve:

(i) an appeal or its content no later than the time required for service of the notice of hearing the appeal;

ii) a petition or its content promptly after the agency receives it; and

iiii) a board appeal or its content promptly after the agency receives it.

5009. Official Notice.

(a) An administrative law judge or the board may take official notice of any generally accepted technical fact in the fields of employment security, disability, or employment taxation, procedures adopted by the department, the U.S. Department of Labor, Employment and Training Administration, or the determinations, rulings, orders, findings or decisions required by law to be made by the Director, administrative law judges, or the board.

(b) An administrative law judge or the board shall take official notice of those matters which must be judicially noticed by a court under section 451 of the Evidence Code. An administrative law judge or the board may take official notice of those matters set forth in section 452 of the Evidence Code.

(c) Before an administrative law judge takes official notice of those matters referred to in sections 452(g) or (h) of the Evidence Code, each party participating in the hearing shall be given reasonable opportunity to present information relevant to the propriety of taking official notice and the tenor of matters to be noticed.

(d) Before the board takes official notice of those matters referred to in section 452(g) or (h) of the Evidence Code, each party shall be given reasonable opportunity to present information relevant to the propriety of taking official notice and the tenor of the matters to be noticed.

(e) An administrative law judge or the board shall state in a decision, order, or on the record the matters concerning which official notice has been taken.

§ 5010. Case File, Audiovisual Record and Transcript.

(a) The provisions of this rule apply except as otherwise ordered or required by law.

(b) The agency shall maintain the case file, the audiovisual record, and any transcript that has been prepared for at least 13 months after the last date of service of any decision or order, and may thereafter destroy them.

(c) A party, a person who observes an electronic hearing pursuant to rule 5062(o), or an employee or agent of the agency may review all or part of a case file, audiovisual record, or transcript that has been prepared.

(d) Upon request by a party or a person who observes an electronic hearing pursuant to rule 5062(o), the agency shall permit that person to use, without charge, such facilities or equipment as may be reasonably necessary to review all or part of a case file, audiovisual record, or transcript that has been prepared.

(e) Upon request by a party, at a charge of $5, the agency shall provide that party a copy of any or all documents in a case file.

(f) Upon request by a party, at a charge of $5, the agency shall provide that party a copy of all or part of an audiovisual record.

(g) Upon request by a party, at a charge of $5, the agency shall provide that party a copy of all or part of a transcript that has been prepared.

(h) A party shall not be charged for copies if it shows that payment would cause it financial hardship.

(i) A request for copies shall include either payment for the applicable charge or a showing of financial hardship.

(j) Notwithstanding any other provision o this rule, a claimant shall not be charged for copies.

§ 5011. Fees of Claimant's Representative.

If a representative charges a fee for representing a claimant and an issue as to the amount of the fee is raised by the claimant, the representative, an administrative law judge, or a member of the board, the representative shall receive no more for the representative's services than an amount approved by an administrative law judge or the board. If no issue as to the amount of such a fee is raised, the fee shall be deemed approved. The fee approved by an administrative law judge may be reviewed by the board.

§ 5012. Appeal from Withdrawal of Approval of Voluntary Plan.

(a) An appeal from the withdrawal of the approval of a voluntary plan shall be filed by sending it in writing to the board office. Unless otherwise specified in the code or these rules, the procedures applicable to such an appeal shall be those applicable to board appeals. The agency shall serve such an appeal promptly after the agency receives it.

(b) Such an appeal shall specify the reason for the appeal. If it does not, the board shall serve notice requiring the appellant to specify the reason by filing and serving it within 20 days after service of such notice. If the appellant fails to comply, the board may order the appeal dismissed.

(c) If the board decides that evidence shall be taken on such an appeal, it may be taken on behalf of the board before the board, a board member, or an administrative law judge. If evidence is taken before an administrative law judge, the hearing shall be conducted according to the field operations rules.

(d) The board shall make the initial decision on such an appeal by a majority vote of the board acting as a whole.

§ 5050. Withdrawal and Reinstatement.

(a) An appellant or petitioner may apply to withdraw an appeal or petition before the decision of the administrative law judge is served.

(b) Upon such an application, an administrative law judge shall order the appeal or petition dismissed.

(c) An applicant may apply to withdraw an application for reinstatement, reopening, or vacating a decision before the order of the administrative law judge on the application is served.

(d) Upon such an application to withdraw, an administrative law judge shall order the application for reinstatement, reopening, or vacating dismissed.

(e) The appellant, petitioner, or applicant may file an application for reinstatement within 20 days after service of an order dismissing an appeal, petition, or application due to withdrawal. The application shall specify the reason for reinstatement. If the application is untimely, it shall also specify the reason for the delay.

(f) If the application fails to specify the reason for reinstatement or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within 10 clays after service of such notice. If the applicant fails to comply, an administrative law judge may order reinstatement denied.

(g) If the reason specified by the applicant shows that there is no good cause for reinstatement, or, if applicable, for the untimely application, an administrative law judge may order reinstatement denied.

(h) An application for reinstatement that is not otherwise denied in accordance with this rule shall be scheduled for hearing. If the applicant shows good cause for reinstatement, and, if applicable, for the untimely application, the appeal or petition shall be ordered reinstated; otherwise reinstatement shall be ordered denied.

(i) If an applicant for reinstatement fails to appear in the hearing on reinstatement, an administrative law judge may order reinstatement denied.

§ 5051. Dismissal of Untimely Appeal.

An administrative law judge shall order an untimely appeal dismissed unless the appellant shows good cause for the untimeliness. If good cause is shown, the appeal shall be decided on the merits.

§ 5052. Petition Procedures.

(a) Except with respect to a petition regarding a penalty assessed pursuant to section 1142, 1143, or 1144 of the code, the department may file and serve its

answer to the petition within 30 days after the agency serves the petition. If no answer is filed and served within that time, the petition may be scheduled for hearing without an answer.

(b) If an untimely petition fails to specify the reason for the delay, an administrative law judge may serve notice requiring the petitioner to specify the reason by filing and serving it within 20 days after service of such notice. If the petitioner fails to comply, an administrative law judge may order the petition dismissed.

(c) If an untimely petition is filed within the additional 30 days provided by code section 1222, and the reason specified by the petitioner shows that there is no good cause for the untimeliness, an administrative law judge may order the petition dismissed.

(d) If an untimely petition is filed beyond the additional 30 days provided by code section 1222, and the petitioner fails to specify lack of service of the notice of assessment or a basis for estoppel of the department, the petition may be ordered dismissed.

(e) An untimely petition that is not otherwise allowed or dismissed in accordance with this rule shall be scheduled for hearing, If the untimely petition was filed within the additional 30 clays provided by code section 1222 and the petitioner shows good cause for the untimeliness, or an untimely petition was filed beyond the additional 30 days provided by code section 1222 and the petitioner shows lack of service of the notice of assessment or that estoppel of the department is appropriate, the untimely petition shall be allowed; otherwise it shall be ordered dismissed.

(f) An administrative law judge may serve notice of intention to render a decision or order on a petition without a hearing. Within 20 days after service of such a notice, any party may file and serve an application for a hearing. A hearing shall be granted upon such an application, except as provided in the next subsection of this rule. If no such application is filed and served within that time, an administrative law judge may proceed to render a decision or order on the petition without a hearing.

(g) A hearing is not required on a petition for refund if the petitioner had a prior hearing involving the same issues on a petition for reassessment. If so, an administrative law judge may serve notice of intention to render a decision on the petition for refund without a hearing. Within 20 clays after service of such notice any party may file and serve an application for a hearing on the petition for refund setting forth any new or additional evidence it may wish to present. Within 20 days after service of such an application, any other party may file and serve a response. After considering any such application and any such response, an administrative law judge may either grant a hearing on the petition for refund,

or deny it and proceed to render the decision upon the basis of the record of the hearing on the petition for reassessment.

§ 5053. Joinder and Consolidation.

(a) Whenever it appears that other parties should be joined in order to dispose of all issues, an administrative law judge shall do so and shall grant such continuance and hold such additional hearing as may be necessary.

(b) Any number of proceedings may be consolidated for hearing or decision when the facts and circumstances are similar and no substantial right of any party will be prejudiced.

(c) Proceedings with respect to which the alleged facts and the points of law are the same shall be consolidated for hearing.

§ 5054. Scheduling of Hearing.

(a) Appeals shall be heard promptly.

(b) The hearing shall be scheduled at a location as near as practicable to the claimant or petitioner, and, if practicable, within a 50 mile radius of any department branch office and any residence or office of any other party.

(c) A representative of a party is not included within the definition of a party for the purpose of this rule.

§ 5055. Electronic Hearing.

(a) For good cause, on his or her own motion or upon application of a party or witness, an administrative law judge may schedule or conduct all or part of a hearing as an electronic hearing if each party participating in the hearing has the opportunity to participate in and to hear the entire proceeding while it is taking place and to observe exhibits.

(b) Good cause for scheduling an electronic hearing is presumed:

(i) for the department if there is no department branch office within a 50 mile radius from the place of the hearing;

(ii) for any other party, excluding any representative, if it has no residence or office within a 50 mile radius from the place of the hearing;

(iii) for a representative if a hearing is scheduled as an electronic hearing for its client, and the representative will be at the clients location during the hearing; or

(iv) for a witness if the witness resides outside a 50 mile radius from the place of the hearing.

(c) If notice that a hearing is scheduled as an electronic hearing for any party is served at least 10 clays before the date of the hearing, each party shall file any additional documents, including any statement the party intends to constitute its

appearance, no later than the 7th day after service of the notice of hearing, unless otherwise specified by an administrative law judge.

(d) If a hearing is scheduled as an electronic hearing for any party, but notice of such electronic hearing is not served at least 10 days before the date of the hearing, an administrative law judge, if practicable, shall specify and inform each party of the time and means for filing and serving any additional documents, including any statement the party intends to constitute its appearance. No proof of service is required unless specified by an administrative law judge.

(e) The agency shall serve the documents in the case file a reasonable time before a hearing scheduled as an electronic hearing for any party, if practicable.

(f) Notwithstanding the scheduling of an electronic hearing, any party or witness may participate in person, and, if warranted by the circumstances, an administrative law judge may require any party participating in a hearing to be present at the hearing.

§ 5056. Notice of Hearing.

(a) Unless otherwise provided by the code, the agency shall serve notice of the time and place of hearing an appeal and the issues at least 10 days before the date of the hearing.

(b) Unless otherwise provided by the code, the agency shall serve notice of the time and place of hearing a petition and the issues at least 20 days before the date of the hearing.

(c) A notice of a hearing scheduled as an electronic hearing for any party shall specify each party scheduled to appear electronically, how it is to do so, and the time by which each party is required to file any additional exhibits.

(d) At or before the time the notice of hearing is served, the agency shall notice that upon request it will provide language assistance, special accommodations, or a copy of the agency's governing procedure, without charge.

§ 5057. Continuance of Hearing; Further Hearing.

(a) An administrative law judge may continue a hearing to another time or place on his or her own motion, or, upon a showing of good cause, on the application of a party.

(b) The unavailability of a party or witness to be physically present at a hearing is presumed not to be good cause for a continuance, unless the party or witness is also unavailable to participate in the hearing by electronic means.

(c) Notice of the time and place of the continued hearing, except as provided herein, shall be in accordance with rule 5056. When a continuance is ordered during a hearing, notice of the time and place of the continued hearing is sufficient if given orally to each party participating in the hearing.

(d) Prior to the decision, the administrative law judge on his or her own motion, or upon a showing of good cause on the application of a party, may order a further hearing. Notice thereof shall be given in accordance with rule 5056.

§ 5058. Witnesses, Notices to Attend, and Subpoenas.

(a) A party shall arrange for its witnesses to participate in the hearing.

(b) An administrative law judge may issue a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum on his or her own motion, and shall do so upon the Proper application of a party.

(c) An application for a notice to attend or a subpoena shall include the name of the witness and a showing of the need therefore. An application for a notice to attend shall also include the address of the witness.

(d) An application for a notice to attend and produce or for a subpoena duces tecum shall give the name of the witness, shall specify the documents or things desired to he produced and show the materiality thereof to the issues involved in the proceeding, and shall state that, to the best of the applicant's knowledge, the witness has such documents or things in his or her possession or under his or her control. An application for a notice to attend and produce shall also give the address of the witness, and, if it seeks personal records, shall give the name and address of the consumer. An application for a subpoena duces tecum shall be filed by affidavit.

(e) The agency shall assist a party in preparing an application for a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum.

(f) A notice to attend and produce or a subpoena duces tecum which seeks personal records of a consumer shall include a statement that the consumer has the right to object thereto by making an application for a protective order, including an application to quash, at the hearing.

(g) A party shall arrange for the delivery of a subpoena or subpoena duces tecum issued to it. Except as provided in Government Code sections 68097.1 through 68097.8, delivery of a subpoena or subpoena duces tecum is made by delivering a paper copy to the witness in person a reasonable time before the hearing. A paper copy of any application for subpoena duces tecum shall be delivered with a subpoena duces tecum. Any natural person may deliver a subpoena or a subpoena duces tecum. A party shall send to the consumer, a reasonable time before the hearing, a copy of any subpoena duces tecum issued to it which seeks personal records of the consumer, along with a copy of any application for such a subpoena duces tecum. A party shall file an affidavit showing that any subpoena or subpoena duces tecum issued to it, along with any application for any such subpoena duces tecum, was delivered to the witness, and, if applicable, sent to the consumer.

(h) The agency shall send a notice to attend or a notice to attend and produce to the witness. The agency shall send to the consumer, a reasonable time before the hearing, a copy of any notice to attend and produce which seeks personal records of the consumer.

(i) When a witness does not comply with a notice to attend or a notice to attend and produce, an administrative law judge may issue a subpoena or a subpoena duces tecum to compel compliance, on his or her own motion or upon the application of a party.

(j) A witness who complies with a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum, is entitled to the fees and mileage set forth in Section 68093 of the Government Code provided a written demand therefore is submitted to the administrative law judge at the hearing or filed not later than 10 days after the date on which the witness participated in the hearing. If not so claimed within that time, no fees or mileage shall be allowed.

(k) A notice to attend and produce or a subpoena duces tecum for a hearing scheduled as an electronic hearing for a witness shall direct the witness to file the documents or things sought a reasonable time before the hearing.

(l) Unless the subpoena duces tecum or the notice to attend and produce provides to the contrary, a custodian of documents that are the subject of a subpoena duces tecum or of a notice to attend and produce may comply by filing the documents or things a reasonable time before the hearing, together with a statement authenticating them.

(m) Any interested person may object to the terms of a notice to attend, a notice to attend and produce, a subpoena, or a subpoena duces tecum by making an application for a protective order, including an application to quash, at the hearing. An administrative law judge shall resolve the objection and may make other orders that are appropriate to protect from any unreasonable or oppressive demands, including any violations of the right to privacy. Documents or things that are the subject of a subpoena duces tecum or of a notice to attend and produce shall be made available at the hearing, notwithstanding the intention of an interested person to so object, so as not to delay the hearing in the event an administrative law judge overrules the objection in whole or in part.

(ii) Subpoenas and subpoenas duces tecum shall be enforced in accordance with rule 5070.

§ 5059. Ex Parte Communications.

(a) Except as provided in this rule, after an appeal or petition is filed, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to the administrative law judge from any

party or other interested person, without notice and the opportunity for all parties to participate in the communication.

(b) A communication made on the record in the hearing is permissible.

(c) A document filed or submitted to the administrative law judge is permissible if it is added to the case file, so that all parties have a reasonable opportunity to review it.

(d) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the administrative law judge to be controversial in the context of the specific case. If so, the administrative law judge shall so inform the other participant and may terminate the communication or continue it until after giving all parties notice and opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file so that all parties have a reasonable opportunity to review it. Unless otherwise provided by the code or these rules, an administrative law judge may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matters of procedure or practice" shall be liberally construed.

(e) A communication from the department to the administrative law judge which is permissible under Government Code section 11430.30 is permitted only if any such written communication and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, is added to the case file so that all parties have a reasonable opportunity to review it.

(f) If the administrative law judge receives a communication in violation of this rule, he or she shall comply with the requirements of Government Code section 11430.50.

(g) If before serving as a presiding officer in a proceeding the administrative law judge receives a communication of a type that would he in violation of this rule if received while serving as presiding officer, the administrative law judge, promptly after starting to serve, shall comply with the requirements of Government Code section 11430.50.

§ 5060. Disqualification of Administrative law Judge.

(a) An administrative law judge is subject to disqualification in a proceeding on the following grounds:

(i) for bias, prejudice, or interest in the proceeding as defined by Government Code section 11425.40;

(ii) for receipt of an impermissible ex-parte communication under rule 5059, the effect of which cannot be eliminated under that rule;

(iii) to maintain the separation of the adjudicative function from the investigative, prosecutorial, and advocacy functions as required by Government Code section 11425.30; or

(iv) for any of the grounds specified in Code of Civil Procedure section 170. 1.

(b) An administrative law judge who is subject to disqualification shall voluntarily disqualify himself or herself from a proceeding, unless all parties participating in the proceeding waive the disqualification. A disqualification may not be waived if it is for bias or prejudice, if the administrative law judge has been a material witness concerning the proceeding, if the disqualification is required by Government Code section 11425.30, or if waiver is otherwise prohibited by law.

(c) A party may apply for the disqualification of an administrative law judge by promptly filing an affidavit specifying the grounds upon which it is claimed that the administrative law judge is subject to disqualification. An administrative law judge shall be disqualified from a proceeding if it is determined upon such an application that the administrative law judge is subject to disqualification. An application for disqualification of an administrative law judge shall be decided by a presiding administrative law judge or the chief administrative law judge. An application for disqualification of a presiding administrative law judge shall be decided by the chief administrative law judge. An application for disqualification of the chief administrative law judge shall be decided by the chairperson.

§ 5061. Appearance in Hearing.

A party appears in the hearing by:

(a) being present on the record at a hearing;

(b) participating by electronic means on the record in an electronic hearing;

(c) filing a statement that the party intends to constitute its appearance that the administrative law judge receives by the time of a hearing and does not exclude under rule 5062(j); or

(d) interrogatories or deposition it so ordered by an administrative law judge pursuant to rule 5062(k).

§ 5062. Conduct of Hearing and Evidence.

(a) A party appearing in a hearing shall have his or her evidence and witnesses and be ready to proceed.

(b) An administrative law judge shall consider only those issues in a department action which are appealed, petitioned, or noticed by the agency. A related issue shall not be considered unless a waiver is obtained from all parties. If the

department amends the action which is appealed or petitioned, the scope of an administrative law judge's consideration extends to the amended department action, provided that the department either serves it on all other parties at least 10 days before the hearing, or all other parties waive such service.

(c) Testimony shall be taken only on oath, affirmation, or penalty of perjury.

(d) Each party shall have these rights:

(i) to review the case file;

(ii) to call and examine parties and witnesses;

(iii) to introduce exhibits;

(iv) to question opposing witnesses and parties on any matter relevant to the issues even though that matter was not covered in the direct examination;

(v) to impeach any witness regardless of which party first called the witness to testify; and

(vi) to rebut the evidence against it.

(e) Except as otherwise prohibited by law, any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions.

(f) An administrative law judge has discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time, or to prevent injustice, undue burden, or prejudice.

(g) The rules of privilege shall be effective to the extent that they are required by law to be recognized at the hearing.

(h) In a proceeding in which conduct that constitutes sexual harassment, sexual assault, or sexual battery is alleged, evidence of specific instances of a complainant's sexual conduct with individuals other than the alleged perpetrator is subject to the limitations set forth in Government Code section 11440.40.

(i) Evidence of communications made in settlement negotiations is subject to the limitations of Government Code section 11415.60. Evidence of communications made in alternative dispute resolution under Article 5 of Chapter 4.5 of Part I of Division 3 of Title 2 of the Government Code, commencing with section 11420.10, is subject to the limitations of Government Code section 11420.30. Evidence of communications made in mediation is subject to the limitations of Evidence Code section 1152.5.

(j) An administrative law judge may exclude an untimely exhibit, including an untimely statement that a party intends to constitute its appearance pursuant to rule 5061 (c).

(k) An administrative law judge may order the taking of interrogatories and depositions inside or outside the state, upon such terms and conditions a may be just.

(l) An administrative law judge may question any party or witness and may introduce exhibits.

(m) The taking of evidence in a hearing shall be controlled by the administrative law judge in a manner best suited to ascertain the facts and safeguard the rights of the parties. Prior to taking evidence, the administrative law judge shall explain the issues and the order in which evidence will be received.

(n) A hearing shall be open to public observation unless an administrative law judge orders closure or makes other protective orders pursuant to Government Code section 11425.20 or Unemployment Insurance Code section 2713.

(o) If an electronic hearing is open to public observation, members of the public may be physically present at the place where the administrative law judge is conducting the hearing, and any member of the public who is so present may review the case file, the audiovisual record, and any transcript that has been prepared.

§ 5063. Language Assistance.

(a) The hearing shall be conducted in English.

(b) If a party or witness does not proficiently speak or understand English and requests language assistance before the hearing commences, the agency shall provide the party or witness an interpreter in the hearing at the expense of the agency.

(c) Translation by the interpreter in the hearing shall be provided only on oath, affirmation, or penalty of perjury.

(d) If the interpreter is certified pursuant to Government Code section 11435.30, that shall be established in the hearing.

(e) If the interpreter is not certified pursuant to Government Code section 11435.30, but the agency has previously provisionally qualified the interpreter pursuant to Government Code section 11435.55, that shall be established in the hearing.

(f) If the interpreter is neither certified pursuant to Government Code section 11435.30, nor previously provisionally qualified by the agency pursuant to Government Code section 11435.55, the administrative law judge may provisionally qualify the interpreter for that hearing by establishing the interpreter's qualifications in the hearing.

§ 5064. Argument.

Any party may apply to present oral or written argument prior to the close of the hearing. The administrative law judge shall grant oral argument. The administrative law judge may grant written argument, and, if so, shall inform the parties of the time and manner by which it shall be filed and served. No proof of service shall be required unless specified by the administrative law judge.

§ 5065. Decision.

(a) The administrative law judge shall promptly issue the decision, and the agency shall promptly serve it.

(b) The decision shall set forth the issue, the findings of facts, the reasons for decision, the decision, and the date served.

(c) The findings of facts shall be based exclusively on the evidence of record in the proceeding and on matters officially noticed in the proceeding.

(d) If a factual determination is based substantially on the credibility of a witness, the reasons for the decision shall identify any specific evidence of the observed demeanor, manner, or attitude of the witness that supports the determination.

(e) A penalty may not be based on a guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule subject to Chapter 3.5, commencing with section 11 340, of Part I of Division 3 of Title 2 of the Government Code, unless it has been adopted as a regulation pursuant to that chapter.

§ 5066. Dismissal of Appeal or Petition.

An administrative law judge may order an appeal or petition dismissed without a hearing on the following grounds:

(a) there is no adverse department action to be reviewed;

(b) the appellant or petitioner did not intend to file an appeal or petition;

(c) the case was registered in error;

(d) there is another case with the same parties and issues;

(e) there is no disputed issue to be decided;

(f) the matter is moot;

(g) the administrative law judge lacks jurisdiction; or

(h) the appellant or petitioner fails to appear in the hearing on the appeal or petition.

§ 5067. Reopening.

(a) The appellant, petitioner, or applicant may file an application to reopen the appeal, petition, or application within 20 days after service of an order:

(i) dismissing an appeal or petition on any of the grounds specified rule 5066;

(ii) denying an application for reinstatement, reopening, or vacating a decision for failure to comply with a 10 day notice to specify the reason for the application or, if applicable, the reason the application is untimely;

(iii) denying an application for reinstatement, reopening, or vacating a decision for failure to appear in the hearing on such an application;

(iv) dismissing an untimely petition for failure to comply with a 20 day notice to specify the reason the petition is untimely; or

(v) denying a hearing on a petition for failure to apply for a hearing within 20 days after service of a notice of intention to render a decision or order on the petition without a hearing.

(b) The application shall specify the reason for reopening. If the application is untimely, it shall also specify the reason for the delay.

(c) If the application fails to specify the reason for reopening, or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within 10 days after service of such notice. If the applicant fails to comply, an administrative law judge may order reopening denied.

(d) If the reason specified by the applicant shows that there is no good cause for reopening, or, if applicable, for the untimely application, an administrative law judge may order reopening denied.

(e) An application for reopening that is not otherwise denied in accordance with this rule shall be scheduled for hearing. If the applicant shows good cause for reopening, and, if applicable, for the untimely application, the matter shall be ordered reopened; otherwise reopening shall be ordered denied.

(f) If an applicant for reopening fails to appear in the hearing on reopening, an administrative law judge may order reopening denied.

(g) If a party that has grounds to file an application to reopen files what purports to be a board appeal, it shall be treated as an application to reopen, unless the application or the party clearly states to the contrary.

(h) An order granting reopening is appealable to the board only upon service of an adverse decision or order on the appeal or petition.

§ 5068. Vacating Decision.

(a) If a party fails to appear in any day of a hearing and an administrative law judge issues a decision on the merits adverse to that party's interest, the party may file an application to vacate the decision within 20 days after service of the decision. The application shall specify the reason for vacating the decision. If the application is untimely, it shall also specify the reason for the delay.

(b) If the application fails to specify the reason for vacating the decision, or, if applicable, for its untimeliness, an administrative law judge may serve notice requiring the applicant to specify the reason by filing it within 10 days after service of such notice. If the applicant fails to comply, an administrative law judge may order the application to vacate the decision den i ed.

(c) If the reason specified by the applicant shows that there is no good cause for vacating the decision, or, if applicable, for the untimely application, an administrative law judge may order the application to vacate the decision denied.

(d) An application to vacate a decision that is not otherwise denied in accordance with this rule shall he scheduled for hearing. If the applicant shows good cause for vacating the decision, and, if applicable, for the untimely application, the decision shall be ordered vacated; otherwise the application to vacate the decision shall be ordered denied.

(e) If an applicant fails to appear in the hearing on an application to vacate a decision, an administrative law judge may order the application denied.

(f) If a party that has grounds to file an application to vacate a decision files what purports to be a board appeal, it shall be treated as an application to vacate the decision, unless the application or the party clearly states to the contrary.

(g) Upon service of an order denying an application to vacate a decision, the applicant shall be deemed to have filed a board appeal of the denial of the application to vacate, and also of the original adverse decision which was the subject of the application to vacate.

(h) An order vacating a decision is appealable to the board only upon service of an adverse decision or order on the appeal or petition.

§ 5069. Correcting Clerical Error.

(a) Except as otherwise provided in the code or these rules, after a decision or order of an administrative law judge has been served, it shall not be changed except to correct a clerical error.

(b) If a further hearing is not necessary to correct a clerical error, the administrative law judge, promptly alter discovering the clerical error and before a board appeal is filed, may serve an order correcting the clerical error or a corrected decision or order.

(c) If a further hearing is necessary to correct a clerical error, the administrative law judge, promptly after discovering the clerical error and before a board appeal is filed, may order the erroneous decision or order vacated, schedule a further hearing on notice as provided in rule 5056, and thereafter serve a corrected decision or order.

(d) The time within which to file any board appeal or application to reinstate, reopen, or vacate begins anew upon service of an order correcting a clerical error or a corrected decision or order, even as to any matter which is not thereby corrected.

§ 5070. Enforcement and Contempt.

(a) A person is subject to the contempt sanction for any of the reasons specified by Government Code section 11455.10.

(b) If a witness fails or refuses, without substantial justification, to comply with a subpoena or subpoena duces tecum, an administrative law judge shall certify the facts that justify the contempt sanction to the superior court in the county where the proceeding is conducted in accordance with Government Code section 11455.20, provided that the party that applied for and delivered the subpoena or subpoena duces tecum applies for certification and makes an offer of proof that the evidence sought by the subpoena or subpoena duces tecum is relevant and potentially necessary to satisfy the party's burden of proof or persuasion in the hearing.

(c) If a person is subject to the contempt sanction under circumstances other than failure or refusal to comply with a subpoena or subpoena duces tecum, an administrative law judge may certify the facts that justify the contempt sanction to the superior court in the county where the proceeding is conducted in accordance with Government Code section 11455.20.

(d) For the purpose of this rule, if the facts that justify the contempt sanction arise from a person participating or failing or refusing to participate in a proceeding by electronic means, the proceeding shall be deemed to be conducted in the county where that person resides, or, if that county is unknown or outside the state, in the county where that person is employed, or, if that county is unknown or outside the state, in the county where the place of hearing is located.

Chapter 3. Appellate Operations

§ 5100. Joinder and Consolidation.

(a) Whenever it appears that other parties shall be joined in order to dispose of all issues, the board shall so order. The board may remand the case for hearing by an administrative law judge on behalf of the board or for hearing and decision by an administrative law judge.

(b) Any number of proceedings before the board may be consolidated for hearing, argument, consideration, or decision when the facts and circumstances are the same or similar and no substantial right of any party will be prejudiced.

§ 5101. Issues Before Board.

In any board appeal, or if the board acting as a whole removes a case to itself, the board shall consider only those issues in a department action which were appealed, petitioned, or noticed by the agency, related issues properly considered by the administrative law judge, related procedural issues, or appellate procedural issues. The board may remand to the department or to an administrative law judge for appropriate action any issues raised for the first time in the board appeal.

§ 5102. New or Additional Evidence.

(a) An application to present new or additional evidence shall be filed and served within 1 0 days after service of a board appeal or its content pursuant to rule 5008(e).

(b) An application to present new or additional evidence shall state the nature of the evidence, the materiality of such evidence, and the reasons why such evidence was not introduced at the hearing before the administrative law judge. No such evidence shall be considered by the board unless the board admits it.

(c) Whenever the board on its own motion or U the application of a party grants the taking of new or additional evidence, the matter may be remanded to an administrative law judge for that purpose. The issues at such hearing shall be limited to those issues designated by the board.

(d) However, if the matter is not remanded and only documentary evidence is to be admitted, the agency shall serve the evidence and give each party 10 days thereafter to file and serve a response to it.

§ 5103. Withdrawal and Reinstatement of Board Appeal.

(a) A board appellant may file an application to withdraw a board appeal before the board decision is served.

(b) Upon receipt of such an application, the board shall order the board appeal dismissed.

(c) The board appellant may file and serve an application for reinstatement of the board appeal within 20 days after service of such a dismissal order. The application shall specify the reason for reinstatement. If the application is untimely, it shall also specify the reason for the delay.

(d) Within 1 0 days after service of an application for reinstatement of a board appeal, any other party may file and serve a response to it.

(e) If the application fails to specify the reason for reinstatement, or, if applicable, for its untimeliness, the board may serve notice requiring the applicant to specify the reason by filing and serving it within 10 days after service of such notice. If the applicant fails to comply, the board may order reinstatement denied.

(f) Within 10 days after service of such a specification of a reason, any other party may file and serve a response to it.

(g) If the applicant shows good cause for reinstatement, and, if applicable, for the untimely application, the board appeal shall be ordered reinstated; otherwise reinstatement shall be ordered denied.

§ 5104. Untimely Documents.

(a) Any untimely document filed in a proceeding before the board, including an untimely board appeal, shall specify the reason for the delay.

(b) If an untimely document fails to specify the reason for the delay, the board may serve notice requiring the party that filed it to specify the reason for the delay by filing and serving the reason within 10 days after service of such a notice. If the party that filed the untimely document fails to comply with such a notice, the board may order an untimely board appeal dismissed, or may deny late filing or service of any other untimely document.

(c) Within 10 days after service of such a specification of a reason, any other party may file and serve a response to it.

(d) If the party that filed an untimely document shows good cause for the delay, the untimely document shall be allowed; otherwise an untimely board appeal shall be ordered dismissed, or late filing or service of any other untimely document shall be denied.

§ 5105. Written Argument and Briefs.

(a) Except as otherwise provided by this rule or specified by the agency, a party may file and serve written argument within 12 days after service of the board appeal or its content pursuant to rule 5008(e).

(b) A party that requests all or part of the record pursuant to rule 5010, within 12 days after service upon it of the board appeal or its content pursuant to rule 5008(e), may file and serve written argument within 12 days after the agency sends it the record, or within such other time as the agency may specify.

(c) Any person may apply for permission to file a brief as a friend of the board. If granted, any such brief shall be filed and served in accordance with instructions of the board.

§ 5106. Oral Argument.

(a) The board may grant oral argument on its own motion, or on the application of a party filed and served no later than the time the party's written argument must be filed. The agency shall serve at least 10 days' notice of the time and place of oral argument.

(b) An oral argument in any proceeding before the board may be heard by one or more board members. A board member not present at an oral argument shall not participate in the decision of the board unless that member reviews the audiovisual record or transcript of the oral argument.

§ 5107. Basis for Decision.

A board appeal shall be decided upon the evidence of record in the proceeding, matters officially noticed in the proceeding, the case register, any new or additional evidence admitted by the board, and any written or oral argument before the board.

§ 5108. Decision.

(a) The board decision shall set forth the issue, the findings of facts, the reasons for decision, the decision, and the date served.

(b) A decision of a panel is the decision of the board, unless any board member requests that the case be considered and decided by the board acting as a whole. A decision of the board acting as a whole shall be adopted by a motion duly made and passed by a majority vote at a meeting of the board as a whole, and shall be recorded in the minutes of that meeting.

(c) The agency shall promptly serve the board decision.

(d) After a decision of the board has become final, the matter shall not be reopened, reconsidered, or reheard and the decision shall not be changed except to correct a clerical error; provided, however, the board, acting as a whole, may on its own motion reconsider a previously issued decision solely to determine whether or not all or part of such decision shall be designated as a precedent decision.

§ 5109. Precedent Decision.

(a) A majority of the board acting as a whole may designate all or part of a decision as a precedent decision if it contains a significant legal or policy determination of general application that is likely to recur.

(b) A legal or policy determination is significant if it establishes a new rule of law or policy, resolves an unsettled area of law, or overrules, modifies, refines, clarifies, or explains a prior precedent decision.

(c) A legal or policy determination is of general application if the facts are sufficiently common to give guidance to future cases, clearly illuminate the legal or policy determination, and are significant to the parties, the public, the taxpayers, or the operation of the department or the agency.

(d) A legal or policy determination is likely to recur if it is of continuing public interest because of the frequency or the ongoing likelihood of occurrence.

(e) A precedent decision shall be clearly identified as such and published in such a manner as to make it available for public use. Information identifying any party, except the party's name, shall be removed prior to publication.

(f) The agency shall maintain an index of significant legal and policy determinations made in precedent decisions, in accordance with the requirements of Government Code section 11425.60.

§ 5110. Ex Parte Communications.

(a) Except as provided in this rule, after a board appeal is filed or a proceeding is otherwise initiated before the hoard, and while the proceeding is pending, there shall be no direct or indirect communication regarding any issue in the proceeding to any board member from an party or interested person, without notice and the opportunity for all parties to participate in the communication.

(b) A communication made on the record is permissible.

(c) A document that is filed and served is permissible.

(d) A communication concerning a matter of procedure or practice is presumed to be permissible, unless the topic of the communication appears to the board member to be controversial in the context of the specific case. If so, the board member shall so inform the other participant and may terminate the communication or continue it until after giving all parties notice and opportunity to participate. Any written communication concerning a matter of procedure or practice, and any written response, or a written memorandum identifying the participants and stating the substance of any such oral communication or response, shall be added to the case file. Unless otherwise provided in the code or these rules, the board may determine a matter of procedure or practice based upon a permissible ex-parte communication. The term "matter of procedure or practice" shall be liberally construed.

(e) A communication permitted under Government Code section 11430.30 is permissible.

(f) While a proceeding is pending before the board, there shall be no communication, direct or indirect, regarding the merits of any issue in the proceeding, between any administrative law judge serving as presiding officer in the proceeding and any board member. This prohibition does not apply where a

board member serves as presiding officer, or where the administrative law judge does not issue a decision in the proceeding.

(g) If a board member receives a communication in violation of this rule, he or she shall comply with the requirements of Government Code section 11430.50.

(h) If, before a proceeding is pending before the board, a board member receives a communication of a type that would be in violation of this rule if received while the proceeding was pending, the board member, promptly after the proceeding becomes pending, shall comply with the requirements of Government Code section 11430.50.

§ 5111. Disqualification of Board Member.

(a) A board member is subject to disqualification in a proceeding on the following grounds:

(i) for bias, prejudice, or interest in the proceeding as defined by Government Code section 11425.40;

(ii) for receipt of an impermissible ex-parte communication under rule 5110, the effect of which cannot be eliminated under that rule;

(iii) to maintain the separation of the adjudicative function from the investigative, prosecutorial, and advocacy functions as required by Government Code section 11425.30; or

(iv) for any of the grounds specified in Code of Civil Procedure section 170.1.

(b) A board member who is subject to disqualification shall voluntarily disqualify himself or herself from a proceeding, unless all parties waive the disqualification. A disqualification may not be waived if it is for bias or prejudice, if the member has been a material witness concerning the proceeding, if the disqualification is required by Government Code section 11425.30, or if waiver is otherwise prohibited by law.

(c) A party may apply for disqualification of a board member by filing and serving, within 10 days after service of a board appeal or notice of removal, an affidavit specifying the grounds upon which it is claimed that the board member is subject to disqualification. A board member is disqualified from a proceeding if it is determined upon such an application that the board member is subject to disqualification. The application shall be decided by the other members of the board acting as a whole. If a member of a panel to whom a case is assigned withdraws or is disqualified, the chairperson shall assign another member to the panel.

V. SHORT COURSE ON UNEMPLOYMENT INSURANCE *

PART I: PROCEDURAL REQUIREMENTS: TIMELINESS

A. CLAIMS

Under Section 1253(a) of the Code, a claimant must claim benefits each week in accordance with Department regulations.

1. Section 1253-2, Title 22 CCR - Commencement of claims normally is governed by date presented.

2. Section 1326, Title 22 - Detailed regulations governing contents of claims, procedures, and good cause to extend time limits and backdate claims.

B. RULINGS

Under Section 1030, an employer must make timely response to claim notice to protect its account.

1. Must reply to Notice of New Claim Filed within 10 days; to Notice of Computation within 15 days.

2. Rights lost if employer does not respond to first notice received.

(P-B-363).

C. APPEAL AND REOPENING

Time limit to appeal or apply to reopen is 20 days.

(Section 1 328; Section 5067, Title 22)

D. ALL TIME LIMITS CAN BE EXTENDED ON A SHOWING OF GOOD CAUSE.

1. Gibson v. CUIAB, 9 Cal. App. 3d 494. Good cause exists if delay is brief, caused by excusable mistake, and non-prejudicial.

2. Amaro v. CUIAB 65 Cal. App. 3d 715. Good cause not established if delay is substantial and reason for delay insubstantial.

*By Administrative Law Judge Nathaniel Fellner

Presiding Administrative Law Judge Donald Ross (Retired)

PART II: RULES OF EVIDENCE

A. STATUTE

Section 1952 of the Unemployment Insurance Code provides that Administrative Law Judges are not bound by common law or statutory rules of evidence or by technical or formal rules of procedure but may

conduct the hearings and appeals in such manner as to ascertain the substantial rights of the parties.

B. ADMINISTRATIVE CODE PROVISIONS

Section 5062(e), Title 22, California Code of Regulations, provides that any relevant evidence shall be admitted if it is the sort of evidence on which responsible are accustomed to rely in the conduct of serious affairs.

C. HEARSAY

The Appeals Board, in Precedent Decision P-B-235, P-B-293, and P-B-378 consistently followed the legal principle that testimony given at the hearing, under oath and subject to cross-examination is generally entitled to greater weight than hearsay statements, whether or not such statements are in affidavit form. In Precedent Decision P-B-57, however, it recognized that sworn, direct testimony may be disbelieved where it appears unreliable, contradictory, or inherently improbable.

PART III: VOLUNTARY QUIT

A. STATUTE

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he or she left his or her most recent work voluntarily without good cause.

B. APPEALS BOAR DEFINITION OF GOOD CAUSE

The Appeals Board has held in Precedent Decision P-B-27 that there is good cause for the voluntary 'leaving of work where the facts disclose a real, substantial, and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action.

C. MOVING PARTY THEORY

In Precedent Decision P-B-37, the Appeals Board held that in determining whether there has been a voluntary leaving or a discharge under Code Section 1256, it must first be determined who was the moving party in the termination. If the claimant left employment while continued work was available, then the claimant is the moving party. On the other hand, if the employer refused to permit an individual to continue working although the individual is ready, willing and able to do so, then the employer is the moving party.

D. CONSTRUCTIVE QUIT

1. A constructive quit occurs where an individual's unemployment is the result of his own willful act which makes it impossible for the

employment relationship to continue, such as a refusal to pay union dues. (Evenson v. CUIAB 62 Cal. App. 3d 1005)

2. Absence due to incarceration.

a. U.I. Code Section 1256.1

b. Sherman/Bertran v. Calif. Dept. of Emp., 202 Cal. App. 2d 733

c. Kaylor v. Dept. of H. R. D., 32 Cal. App. 3d 732

3. Loss of driver's license. (P-B-288)

4. Refusal to work assigned work schedule. (P-B-209)

E. HEALTH REASONS

1. In Rabago v. CUIAB, 84 Cal. App. 3d 200, the Court held that a reasonable, good faith and honest fear of harm to one's health or safety from the work environment constitutes good cause for leaving work.

2. If the reasons for leaving were medical, the claimant must establish that he relied upon medical advice or that his job aggravated a known, specific problem of health. (P-B-117, 263, 276)

F. FAMILY REASONS

1. Where the leaving is for family reasons it must be shown that there was no other reasonable alternative. Mere desire to be with family members is not enough. (P-B-209)

a. Care for aging parent. (P-B-96)

b. Care for minor children. (P-B-237)

c. Grave Emergency. (P-B-238)

G. JOB RELATED REASONS

1. There is good cause for leaving work where the conditions of employment are so onerous as to constitute a threat to the physical or mental well-being of an employee or where the actions of the supervisor are particularly harsh and oppressive. (P-B-126, 139, 298, & 300).

2. Mere job dissatisfaction or resentment toward supervisor is not good cause. (P-B-138, 297)

3. Must generally try to resolve problem without leaving. (P-B-8)

4. Dissatisfaction with wages and hours generally is not good cause, even if there has been a wage reduction. (P-B-88, 127, 301)

5. May be good cause if the employer has materially breached the employment contract (P-B-296) or if commission employee cannot earn more than a meager amount. (P-B-294)

H. GOOD CAUSE MAY BE NEGATED IF CLAIMANT FAILS TO TAKE ADVANTAGE OF LEAVE OF ABSENCE OR TRANSFER (Rabago v. CUIAB, 84 Cal. App. 3d 200)

1. To be a bona fide leave of absence, claimant and employer must contemplate that employment relationship is continuing and that claimant will return to job upon expiration. The LOA need not "guarantee" reinstatement, but must be more than more preference in rehiring. (Lewis v. CUIAB 56 Cal. App. 3d 729)

2. Claimant who refuses transfer leaves work voluntarily, but may have good cause to do so. (P-B-44, 232)

3. Employer may have burden of showing it offered a leave of absence. (P-B-246)

PART IV: MISCONDUCT

A. STATUTE

Section 1256 of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he or she has been discharged for misconduct connected with his or her most recent work.

B. APPEALS BOARD DEF:INITION OF MISCONDUCT

In Precedent Decision P-B-3 the Appeals Board held that misconduct consists of four elements: (1) a material duty owed to the employer; (2) a substantial breach of that duty; (3) a breach which is a willful or wanton disregard of that duty; and (4) evinces a disregard of the employer's interests.

C. BURDEN OF PROOF

In Maywood Glass Company v. Stewart 1 70 Cal. App. 2d 719, the Court held that the employer has the burden of establishing misconduct.

D. SINGLE INCIDENT

1. In Silva v. Nelson 31 Cal. App. 3d 136, the Court held that a single instance of an offensive remark to the employer was a mere mistake or error in judgment and not misconduct.

2. However, deliberate refusal to follow employer's reasonable instructions about job performance is misconduct, even if act is isolated. (P-B-190)

3. Some serious violations are generally misconduct, even if isolated and committed without prior warning:

a. Drinking on the job or appearance at work under the influence. (P-B-221) Unless claimant has "irresistible impulse" to drink (Jacobs v. CUIAB, 25 Cal. App. 3d 1035).

b. Misappropriation of employer's funds (P-B-57) but not mere failure to handle employer's funds according to correct procedure. (Delgado v. CUIAB 41 Cal. App. 3d 788).

c. Altercations, unless is self-defense (P-B-167).

d. Aggravated misrepresentation on work application (P-B-241), but not mere "puffing" about ability. (P-B-i 84)

e. Sleeping, but not "dozing off.' (P-B-i 85)

E. STANDARDS OF CARE

1. In Precedent Decision P-B-14, the Appeals Board held that "a single dereliction or minor and casual acts of negligence or carelessness do not constitute willful misconduct. But a series of accidents, attributable to negligence, occurring periodically and with consistent regularity, which produce substantial financial loss to the employer, will support the conclusion that the employee has recklessly or carelessly disregarded his duties, or has been indifferent to the requirements of his occupation, and is therefore guilty of misconduct."

2. Employees in well-paid, responsible jobs are subject to higher standards of care than others. (P-B-193)

F. WORK PERFORMANCE

In Precedent Decisions P-B-214, P-B-222, and P-B-224, the Appeals Board held that poor work performance, inefficiency, ineptitude or failure to perform "up to par" does not normally constitute misconduct. However, a continued failure to work up to one's capability does show intentional disregard of the employer's interests. (Precedent Decision P-B-223)

G. TARDINESS

In Drysdale v. Dept. of Human Resources Development, 77 Cal. App. 3d 345, the Court held that recurring tardiness after repeated admonitions indicates that the conduct was intentional and substantial disregard of the employer's interests.

H. ABSENTEEISM

In Precedent Decision P-B-216, the Appeals Board held that absence caused by illness does not constitute misconduct. However, the extended failure to notify the employer of an absence, even where the reason for the absence is justifiable, is misconduct. (Precedent Decision P-B-215)

I. PROXIMATE CAUSE

For disqualification to be imposed, the breach of duty, even if a serious one, must be shown to have been the proximate cause of discharge. (P-B-192, 214)

PART V: ABLE AND AVAILABLE FOR WORK

A. STATUTE

Section 1253(c) of the Unemployment Insurance Code provides that a claimant is eligible to receive benefits with respect to any week only if he or she was able to work and available for work that week.

B. DEFINITION OF AVAILABILITY FOR WORK

In Sanchez v. CUIAB (1977) 20 Cal.3d 55, the California Supreme Court held that availability for work within the meaning of Section 1253(c) requires no more than (1) that an individual claimant be willing to accept suitable work which he or she has no good cause for refusing and (2) that the claimant thereby make himself or herself available to a substantial field of employment.

Once a claimant has shown he is available for suitable work for which he or she has no good cause for refusing, the Employment Development Department has the burden of proving the claimant is not available to a substantial field of employment. (Sanchez, supra at 71.)

In Precedent Decision P-B-484 the Appeals Board held that the Employment Development Department does not need to present any evidence on whether the claimant remains attached to a substantial field of employment if it is found that the claimant is not willing to accept any suitable work.

C. STATUTE FOR SUITABLE WORK,

Section 1258 of the Unemployment Insurance Code provides that suitable work means work in the individual's usual occupation or for which he or she is reasonably fitted.

D. LABOR MARKET

In Precedent Decision P-B-180, the Appeals Board stated that a labor market for an individual exists when there is a market for the type of services which the individual offers in the area in which he or she offers them.

E. GOOD CAUSE FOR RESTRICTING AVAILABILITY FOR WORK

1. Child Care. (Sanchez)

2. Part-time work (U.I. Code Section 1253.8)

PART VI: OVERPAYMENT

A. STATUTE

Section 1375 of the Unemployment Insurance Code provides that a claimant who is overpaid benefits is liable for this amount unless the overpayment was not due to fraud, misrepresentation or willful nondisclosure on his part, was received without fault on his part, and its recovery would be against equity and good conscience.

B. COURT INTERPRETATION

In Gilles v. Dept. of Human Resources Development 11 Cal. App. 3d 313, the Court held that matters to be considered under "equity and good conscience" are: (a) the cause of the overpayment; (b) whether the claimant received only normal benefits or some extra duplicative benefit; (c) whether the claimant changes his position in reliance upon receipt of the benefits; and (d) hard-ship on the claimant, would tend to defeat the objectives of the unemployment insurance code.

PART VII: FALSE STATEMENTS

A. Section 1257(a) of the Unemployment Insurance Code provides that an individual is disqualified for benefits if he willfully made a false statement or representation, with actual knowledge of the falsity thereof, or willfully failed to report a material fact to obtain any unemployment compensation benefits.

B. STATUTE: EMPLOYER FALSE STATEMENT

Section 1142 of the Unemployment Insurance Code provides that if the Director finds that any employer or any employee, officer or agent of any employer, in submitting facts concerning the termination of a claimant's employment, willfully makes a false statement or representation or willfully fails to report a material fact concerning such termination, the Director shall assess a penalty against the employer in an amount not less than 2 or more than 10 times the weekly benefit amount of such claimant.

C. INTERPRETATION OF THE CODE

1. In Diagnostic Data v. CUIAB, 34 Cal. App. 3d 556, the Court held that there can be a willful, false statement without an intent to deceive.

2. In Precedent Decision P-R-216 the Appeals Board held that the Code does not require an intent on the part of the employer to defraud in order for there to be a violation of the Code.

VI. WHERE AND HOW TO OBTAIN ADDITIONAL PUBLICATIONS AND MATERIALS

PUBLICATIONS PRICE LIST

PUBLICATION	PRICE	ORDER FROM
Bound Volumes of Appeals Board Precedent Decisions	$50.00 Ea.	California Unemployment Insurance Appeals Board P.O. Box 944275 Sacramento, CA 94244 Phone (916) 263-6783

The following publications can be ordered from the Office of Chief Administrative Law Judge, 2400 Venture Oaks Way, Suite 150, Sacramento, CA 95833.

- Unemployment Insurance Code
- Title 22, California Code of Regulations
  Social Security, Employment Development Department,
  Division 1, Subdivision 1 and 2
- Amendment Service to Title 22, Division 1

For cost of above, contact (916) 263-6722.

The following publications may be ordered at no charge by writing to:

Office of Chief Administrative Law Judge
2400 Venture Oaks Way, Suite 150
Sacramento, CA 95833

- Appeals Procedure Pamphlet
- 27 Ways to Avoid Losing Your Unemployment Appeal
- A Guide for Claimants, Employers, and their Representatives

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CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

2400 Venture Oaks Way, Sacramento, CA 95833
P.O. Box 944275, Sacramento, CA 94244-2750

For additional information and a listing of current board members please visit us at:
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FRESNO OFFICE OF APPEALS
590 West Alluvial Avenue, Suite 110, Fresno, CA 93711.....(559) 248-2520

INGLEWOOD OFFICE OF APEALS
9800 La Cienega Boulevard, Suite 901, Inglewood, CA 90301.....(310) 337-4302

INLAND OFFICE OF APPEALS
9655 Arrow Route, Building #19, Suite A, Rancho Cucamonga, CA 91729.....(909) 987-2212

LOS ANGELES OFFICE OF APPEALS
300 South Spring Street, Suite 1502, Los Angeles, CA 90013.....(213) 897-5267

OAKLAND OFFICE OF APPEALS
1515 Clay Street, Suite 902, Oakland, CA 94612.....(510) 622-3900

ORANGE COUNTY OFFICE OF APPEALS
6 Centerpointe Drive, 4th Floor, La Palma, CA 90623.....(714) 562-5560

OXNARD OFFICE OF APPEALS
2220 East Gonzales Road, Suite 200, Oxnard, CA 93030.....(805) 485-5389

PASADENA OFFICE OF APPEALS
433 North Fair Oaks Ave, Suite 200, Pasadena, CA 91109.....(626) 304-7966

SACRAMENTO OFFICE OF APPEALS
2400 Venture Oaks Way Suite 100, Sacramento, CA 95833.....(916) 263-6706

SAN DIEGO OFFICE OF APPEALS
3517 Camino Del Rio South, Suite 310, San Diego, CA 92108.....(619) 521-3324

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160 West Santa Clara Street, Suite 300, San Jose, CA 95113.....(408) 277-1561